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Paper No. 9

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In re Application of  
Mercola et al.  
Application No. 10/032,260  
Filed: December 20, 2001  
Attorney Docket No. ADA.001CIP1

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**MAR 31 2004**

**OFFICE OF PETITIONS  
ON PETITION**

This is a decision on the petition under 37 CFR §1.137(a), filed February 13, 2004. This petition is being treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment.

The petition to withdraw the holding of abandonment is **GRANTED**.  
The petition filed under 37 CFR 1.137(a) is **dismissed as Moot**.

The application was declared abandoned for failure to timely reply to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures mailed March 20, 2002. The Notice required the submission of substitute computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information provided on the CRF is identical to the written sequence listing. Petitioner was informed of the above-identified application's abandonment by a Notice of Abandonment mailed on February 6, 2004.

Petitioner maintains a CRF containing the Sequence Listing, a copy of the Sequence Listing were submitted on May 8, 2002. In support, petitioner has provided a copy of an Office stamped postcard receipt which acknowledges receipt of the "Sequence Listing" and a file copy on disk plus duplicate. The post card serves as *prima facie* evidence the Sequence Listing was received. Based on the facts stated in the instant petition, and the corroborative evidence provided, it is concluded that the holding of abandonment was improperly imposed.

A review of the record shows the Sequence Listing was received and has now been entered.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition fee in the amount of \$55.00 will be refunded in the form of a Treasury Check.

This application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-0251.

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